

Senate Bill No. 335

(By Senator Minard)

[Introduced January 18, 2012; referred to
the Committee on Banking and Insurance.]

A BILL to amend and reenact §61-3-39e of the Code of West Virginia, 1931, as amended, relating to permitting payees or holders of electronic transfers that have been dishonored because of insufficient funds or credit may send notice to the drawer of the transfer and impose a fee up to \$25.

Be it enacted by the Legislature of West Virginia:

That §61-3-39e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39e. Notice of dishonor by payee; service charge.

1 The payee or holder of a check, draft, ~~or~~ order or elec-
2 tronic payment which has been dishonored because of
3 insufficient funds or credit may send notice thereof to the
4 drawer of the check, draft, ~~or~~ order or electronic payment.
5 The payee or holder of any dishonored check or electronic
6 payment may impose a fee of up to \$25 for a worthless check

7 or for each returned electronic payment. This fee may not be
8 imposed or collected after a complaint for warrant has been
9 delivered to magistrate court. No payee or holder of a check,
10 draft or order which has been dishonored because of insuffi-
11 cient funds or credit shall incur any civil or criminal liability
12 for the sending of a notice substantially in the form provided
13 herein, other provisions of law notwithstanding. The form of
14 the notice shall be substantially as follows:

15 "You are hereby notified that a check/electronic transfer,
16 number, issued by you on (date of check/elec-
17 tronic transfer), drawn upon (name of bank), and payable to
18 , has been dishonored. Pursuant to West
19 Virginia law, you have ten days from the date of this notice
20 to tender payment of the full amount of the check/electronic
21 transfer plus a fee of \$..... (not to exceed \$25 a
22 worthless check/electronic transfer) to the undersigned at
23 You are further notified that in the event the
24 above amount is timely paid in full you will not be subject to
25 legal proceedings, civil or criminal.

26 Dated, 20....

27

28 (Signed)."

The provisions of this section do not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of the dishonored check, draft or order or any form of electronic payment.

33 The holder or payee of any check, draft or order shall
34 relinquish the check, draft or order to the maker upon tender
35 of the full amount due at any time before a complaint for
36 warrant has been presented to magistrate court. In the event
37 complaint for warrant has been presented to magistrate
38 court, payment may be made only through the court and any
39 holder or payee unlawfully accepting payment after that
40 time shall be liable for all costs which may be imposed by the
41 magistrate court in the matter, including all costs which may
42 have accrued by the time the magistrate court is notified of
43 the payment.

(NOTE: The purpose of this bill is to permit the payee or holder of an electronic payment that has been dishonored because of insufficient funds or credit may send notice to the drawer and impose a fee up to \$25. The bill makes electronic payments subject to the same fees as are currently permitted for returned checks.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)